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February 17, 2010

Federal Communications Commission
Office of the Secretary

Scott Stone
 Deputy Chief
 Mobility Division
 Wireless Telecommunications Bureau
 Federal Communications Commission
 445 12th Street, SW
 Washington, DC 20554

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Federal Communications Commission
Bureau / Office

Re: American Hospital Association
Request for Blanket Waiver of Section 97.113(a)

Dear Mr. Stone:

The American Hospital Association ("AHA")¹ hereby requests a blanket waiver of Section 97.113(a)(3) of the Commission's rules,² to permit hospitals seeking accreditation from the Joint Commission (formerly the Joint Commission on Accreditation of Healthcare Organizations) to utilize Amateur Radio operations as part of emergency preparedness drills between now and the release of a final order in response to the upcoming Notice of Proposed Rulemaking that will consider revisions to this Section.

In order to secure the health of our citizens and ensure preparedness in times of national crisis, hospitals have long participated in a diverse array of emergency preparedness drills. Indeed, the Joint Commission has adopted Accreditation Standards that require hospitals to prepare an "Emergency Operations Plan" setting forth how a hospital will communicate during emergencies.³ Pursuant to this standard, the hospital must establish "backup communications processes and technologies (for example, cell phones, landlines, bulletin boards, fax machines, satellite phones, Amateur Radio, text messages) to communicate essential information if primary communications systems

¹ The AHA is the national organization representing approximately 5,000 hospitals and health care networks.

² 47 C.F.R. § 97.113(a)(3) (prohibiting amateur radio stations from transmitting communications "in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer). AHA continues to believe that the use of Amateur Radio operations as part of emergency preparedness drills does not implicate the prohibition regarding "pecuniary interests" set forth in Section 97.113(a). See Public Notice, DA 09-2259 (WTB/PSHSB/EB Oct 20, 2009) ("Public Notice").

³ See Joint Commission Standard EM.02.02.01. The Joint Commission "has accredited hospitals for more than 50 years and today it accredits approximately 4,250 general, children's, long term acute, psychiatric, rehabilitation and surgical specialty hospitals, and accredits 358 critical access hospitals maintaining a unique accreditation program for these organizations. Approximately 88 percent of the nation's hospitals are currently accredited by the Joint Commission." See http://www.jointcommission.org/AboutUs/Fact_Sheets/hospital_facts.htm.

fail."⁴ Standard EML03.01.03 requires hospitals to test their Emergency Operations Plan twice annually and stipulates that the testing drills must "incorporate likely disaster scenarios that allow the hospital to evaluate its handling of communications, resources, and assets. . . ." Thus, if a hospital plans on utilizing Amateur Radio as a backup communications source during a disaster pursuant to Standard EML02.02.01, it must conduct at least two emergency drills annually utilizing Amateur Radio.

Based on the foregoing, we believe that it would advance the public interest to grant hospitals seeking Joint Commission accreditation a blanket waiver that would permit the use of Amateur Radio operations during emergency drills conducted pursuant to the Joint Commission's guidelines. Good cause exists for granting the waiver request⁵ because it would facilitate hospital accreditation and would ensure that communications run smoothly during an actual emergency. Absent a grant of the blanket waiver, the Commission and hospitals will be forced to prepare, file and process a raft of waiver requests from hospitals that need to incorporate Amateur Radio operations into their emergency drills for accreditation and emergency preparedness purposes. Thus, a blanket authorization would be far more effective and efficient at advancing the public interest than individualized waiver requests from numerous hospitals. In light of the Commission's and hospitals' shared interest in reliable communications in times of crisis, the Commission should grant the waiver promptly.

Moreover, grant of the waiver request is consistent with the purposes of the Amateur Radio rules and would serve the public interest.⁶ One of the core principles behind the creation of the Amateur Radio Service was the "[r]ecognition and enhancement of the value of amateur service to the public as a voluntary non-commercial communications service, particularly with respect to providing emergency communications."⁷ The rules expressly permit an amateur radio station "to use any means of radiocommunications at its disposal" to provide essential communications during emergencies.⁸ Waiving the rules necessary to permit Amateur Radio operators to participate in hospitals' emergency preparedness drills conducted pursuant to the Joint Commission's guidelines is consistent with these objectives.

Further, contrary to the interpretation set forth in the Public Notice, AHA does not believe that Section 97.113(a) prohibits the use of Amateur Radio stations in emergency preparedness drills conducted by hospitals in any event. Section 97.113 was adopted to ensure that Amateur Radio licenses were not being used for financial gain.⁹ An Amateur Radio operator that assists in emergency preparedness drills is not using the license for financial gain. The fact that an Amateur Radio operator participating in these drills may

⁴ See Standard EML02.02.01, Rationale.

⁵ See 47 C.F.R. § 1.3.

⁶ See 47 C.F.R. § 1.925.

⁷ 47 C.F.R. § 97.1(a).

⁸ 47 C.F.R. § 97.403.

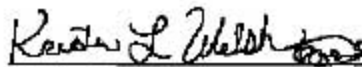
⁹ See *Amendment of Part 97 of the Commission's Rules to provide for the Amateur-Satellite Service*, Docket No. 19852, Report and Order, 81 FCC 2d 480, ¶ 22 (1980); *Amendment of Part 97 of the Commission's Rules Governing the Amateur Service to Permit Certain Amateur Radio Operators to Accept Compensation while Transmitting Disaster Relief Messages*, 14 FCC Rod 20595, ¶ 7 (PSPWD 1995) ("1995 Order").

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also be a hospital employee does not convert the activity into one barred by Section 97.113.¹⁰ Moreover, Section 97.113 should not be interpreted to prohibit participation in emergency drills given that it was amended in 1993 to permit greater flexibility for amateur stations and to allow amateur operators to "facilitate events such as races and parades, to support educational activities, to provide personal communications such as making appointments and ordering food, to collect data for the National Weather Service, and to provide assistance voluntarily even where there are other authorized radio services available."¹¹ Nevertheless, given the interpretation set forth in the Public Notice, AHA respectfully requests a blanket waiver of Section 97.113 to permit hospitals seeking Joint Commission accreditation to utilize Amateur Radio operations as part of emergency preparedness drills pursuant to the joint Commission guidelines until the Commission adopts a final order in response to the forthcoming Notice of Proposed Rulemaking that will seek comment on potential changes to this Section.

If you have any questions regarding this waiver request, please do not hesitate to contact the undersigned.

Sincerely,



Kristin L. Welsh
Vice President Strategic Initiatives and
Business Community Liaison

¹⁰ See 1999 Order at ¶ 9 (noting that "amateur radio operators who also are emergency personnel engaged in disaster relief do not appear to be receiving compensation for transmitting communications").

¹¹ *Id.* at ¶ 7.